O. Motor/149

1949

File No.

Legal Department

A **BRANCH**

Subject:—

Opinions Under the

Bombay Motor Vehicle Act

1939

P-69/E

O Motor/149

File No.

Gen. 194 e.

344-H

C O N T E N T S .

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Office of the R.L.A.

Nomination of Chairman to preside over R.T.A. Meetings.
.....
The Bombay Motor Vehicles Rules, 1940. Rules 46(6) and 47(5).

The proposal of the Provincial Transport Authority at "A" of his letter at page 1 ante would not be legally feasible unless rules 46(6) and 47(5) of the Bombay Motor Vehicles Rules are suitably amended

Id/- P.M.L
dt/- 9/4/

Remembrancer of Legal Affairs.

L.R. to H.D. No. 3338, dated the 11th April 1949.

V.v.k. 5/6/56/

SC.

Office of the R.L.A.

It appears that the Idar State adopted in 1946 the motor Vehicles Act, 1939, subject to certain modications, and rules were made by the State in the same year . On 1st January 1947 athe Idar State granted a licence to one Shivbax Singhji Gulabsingghji & Purshotamdas Ghelabhai & Co. to ply motor vehicles for hire for a period of 15 years, and this licence, though termed as a licence, is in fact a monopoly to ply motor vehicles for a period of 15years. After the marger of this State the question has been raised as to whether this licence could be terminated. The Special Officer (Mr. Tukol) considers that when the permit or the ~~(merger of this State the question has been raised as to whether this licence could be terminated. The Special Officer (Mr. Tukol~~) licence is subject to the Motor Vehicles Act, it cannot be considered valid beyond five years in view of section 58 of the Motor Vehicles Act, and that it would be possible for Government to terminate that licence under section 43 of the Motor Vehicles Act as amended by the Bombay Act VII of 1947. R.L.A. is requested to advise whether the view taken by theSpecialOfficer is cor ect.

2. The Special Officer seems tohave proceeded on the assumption that the licence is issued under the Motor Vehicles Act, andcons equently it would be governed by section 58. That assumption is not correct. The Motor Vehicles Act as adopted by theState does not provide for the grant of any monopoly for service. A monopol of this kind would not be authorised by sectio 43 of theAct. Rule 47 and therecitals in thelicence also show that the monopoly was not granted under theAct. It is true that the license recites that it is subject to theprovisions of theMotor Vehicles Act and the Rulesthat may be enforced thereunder from time to time. This only means that except as otherwise provided in the licence the provisions of the Motor Vehicles Act and theRules would be applicable The period of monopolh is expressly stated inhte licence .

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The monopoly would, therefore, be deemed to have been granted in exercise of the prerogative right of the Ruler of the State, for, the grant of such monopoly , if not provided for by a statute, could only berealatable to the exercise of prerogative right, see Keith's Constitutional Law pp. 204-205 which deal with monopolies and exclusive trading licences.

3. Section 43(1)(d)(iii) gives power to Government to cancel any permit granted under the Act inrespect of a transport vehicle or cases of such permits either generally or in any area specified in the notification etc. In view of what is stated above, it is doubtful whether the licence granted in the present cas would be deemed to be a licence granted under the Motor Vehicles Act. Consequently it may not be possible to resort to sectin 43(1)(d)(iii) . The proper course appears to be to refuse to recognise the licence granted by the Idar State, for, for the reasons stated by the R.L.A. in his opinion No. 415-Confl. dated the 2nd August 1948 (Rajpipla case), Government is not bound by the monopoly granted by the Idar State and should not be liable in damages for refusing to recognize it. A notice may therefore be issued to the licensee in the present case intimating him of thelegal position and asking him to apply for a licence under the Motor Vehicles Act failing which he would be liable to prosecution under the Act. If Government do not desire to grant him a licence, Govenment may merely inform the licensee that the licence would no longer be operative and that he should stop running the motor service.

Id/- P.M.L 1/4

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 3565 dated the 2nd April 1949. V.v.k. 8/6

Office of the R.L.A.

Bombay Motor vehicles Rules 1940 Rule 76.

Rule 76 of the Bombay Vehicles Rules and the Government Notification No. 4812/4-V(A), dated 1st April 1949 issued under section 44 of the Motor Vehicles Act themselves make a distinction between the chairman and members constituting the Provincial Transport Authority. Consequently the members of the Provincial Transport Authority to be appointed to form a committee under rule 76(1) of the Bombay Motor Vehicles Rules would be members other than the chairman of the Provincial Transport Authority to appoint himself as one of the members of the committee under rule 76(1).

It would not therefore be legally feasible for the chairman of the Provincial Transport Authority

Id/- P.M.L.
dt/- 8/4/

Remembrance of Legal Affairs.

U.R. to H.D. No. 3860, dated the 9th April 1949.

V.v.k. 5/6/56/

SC.

Office of the R.L.A.

Section 57(7) of the Motor Vehicles Act is mandatory and makes it obligatory on the Regional Transport Authority refusing an application for permit of any kind to give to the applicant4 in writing its reasons for such refusal . In I.L.R. (1944) 1 Cal. 631 it has been held that if the procedure laid down in section 57 is not followed, it would be a case of a material irregularity and theor er for granting or refusing a permit as the case may be, will be liable to be set aside by the appellate authority on appeal being preferred under section 64 by a person aggrieved by such order. The applivant did prefer an appeal under section 64 to the Provincial Transport Authority and that authority confirmed he Regio al Transport Authority's order. The applicant has no remedy by way of suit. This is on theprinciple that where a statute creates a r ight not existing at common law and peovides a special remedy for its enforcement, that remedy alne alone must be followed . The applicant's only remedy was by way of appeal to the Provincial Transport Authority under section 64, and he has no right to file a suit against Government or against the Regional Transport Authority or theProvincial Transport Authority Simply because the Provincial Transport Authority came to a wrong decision in exercise of its jurisdiction. Besides, the reasons for refusal of the permit have now been communicated to the applicant after his notice was recei ed and thereforehis grievances no longer survive. His allegation that the Regional Transport Authority had not applied its mind is not correct. The suit if filed would be defensible.

Id/- P.N.L.
Dt/- 14/5/
Remembrancer of Legal Affairs.

U.R. to H.D. No. 5405 , dated the 16th May 1949.

V.v.k. 6/6/58/

Office of the R.L.A.

Renewal of driving licenses issued in Pakistan.

Motor Vehicles Act, 1939, Section 11 Rule 17.

It appears that the Regional Transport Officer Bombay does not renew motor driving licenses of Pakistan Origin which were last renewed in the Indian Dominion but issues fresh licenses treating them as foreign licenses. Home Department states that in view of clauses (3) and (4) of the Indian Independence (Miscellaneous Transitional Provisions) Order, 1947 , the Motor Vehicles Act, 1939 continued to operate as if no partition took place until 31st March 1948 and motor driving licenses issued by authorities in the Pakistan Dominion ceased to be valid in the Indian Dominion after 31.3.1948, and that this however does not cover cases in which such licenses were renewed in the Indian Dominion from time to time continuously prior to that date because with the renewal the license gets transferred to new area. The R.L.A. is requested to advise in the Matter.

2. Paragraph 3 of the Indian Independence (Miscellaneous Trassitional Provisions) Order, 1947 provides that the MotorVehicles Act, 1939 shall have effect as if it extends to both the Dominions during the trasnitiona period i.e- 15/8/1947/ to 31/3/1948/ (see paragraph 2(1)). Paragraph 4 (a) provides that the extent of validity of any license, certificate of registration or permit issued befor 15/8/1947/ under the said Act shall continue to be thesame during the Transitional period. Sub-section (1) of section 11 of the Motor Vehicles Act, 1939 provides that any licensing authority may on application made to it renew a license issued under the provisions of the Act. Sub-section (4) provides that when theauthority renewing the license is not the authority which issued the licens e, it shall intimate the efact of renewal to the authority which issued the license. (See also Rule 17(2)). It is clear from these provisions that thelicenses issued by the authorities in Pakistan Dominion prior to

V.v.k.6/

by the authorities in Pakistan Dominion prior to 15.8.1947 would be valid only upto the trassitional period i.e. 31/3/1948 and could not be renewed in the Indian Dominion after 31/3/1948 other wise on r enewal of license under section 11(1) it would not be possible for thelicensing authority to comply with the provisi ns of sub-section (4) of section 11 of rule 17(2) of the rules. It would therefore be necessary for such licensees to obtain fresh licenses under section 8 of theAct, The proce dure followed by t he Regional Transport Officer, Bombay, in resepect o renewal of licenses of Pakistan origin to beporrect.

Id/- P.M.L.
dt/- 17/5/

Remembrancer of Legal Affairs.

U.R. to H.D. No. 5530 , dated the 18th May 1949.

V.v.k. 6/6/56/

SC.

L.D.R.I.No. 6171 dt.23/4/49/.

Submitted:

It appears that many brick manufacturers who hold private carrier permit charge some fees for transport of finished goods as expenses for the transport provided. If the cost of transport were not shown as a sepatate item in the bill, no objection could be taken but since Govt. has fixed the ceiling prices for finished articles, the manufactureers have perforce to charge extra for transport and show it as a separate item in the Bill, as the fixed prices do not make provision for transport and other expenses involved.

The question for R.L.A.'s consideration is whether these manufacturers can recover transport charges from the customers.

V.v.k. 6/6/56/

SO.

Office of the R.L.A.

Seen and returned.

2. The view expressed in the Home Department office note dated the 29th April 1949 is correct.

Id/-R.M.L.
dt/- 3/6/

Remembrancer of Legal Affairs.

U.R. to H.D. No. 6238 , dated the 4th June 1949.

V.v.k. 6/6/56/

SC.

Office of the R.L.A.

Bombay Motor Vehicles Rules 1940. Rule 6, Fees for the tests of test competence charged by W.I.A.A. thethe Government entitled to claim.

Under clause (e) of sub-section (2) of section 21 of the Motor Vehicles Act, 1939, Government can make rules providing for the medical examination and testing of applicants for licences and of drivers and the fees to be charged therefor. Rules 6 of the Bombay Motor Vehicles Rules, 1940, provide for the conducting the test of competence to drive. Sub-rule (3) rule of 6 privides tha the fee payable by the applicant for the test of competence to drive shall be two rupees for each test and shall be paid before the test is commenced. From sub-rules (1) and (2) of rule, 6, it is clear that the fee is payable by the applicant when the test of competence is conducted by the licensing authority or by an Inspector of Motor Vehicles. Under the second proviso to sub-section (6) of section 7, however, the licensing authority may exempt the applicants from the test specified in the Third Schedule if the applicant possesses a driving certificate issued by an automobil association recognised in this behalf by th Provincial Government. This provision implies that no test of competence is to be held if the applicant possesses a driving certificate issued by an automobile association recognised as such under rule 19. From rule 6(3) read with the second proviso to section 7(6) it will be clear that W.I.A.A. which is recognised by Government for he purpose of the second proviso to sub-section (6) of section 7 of the Motor Vehicles Act, is not legally authorised to charge any fee whatsoever, and much less would Government be entitled to claim such fee charged by W.I.A.A.

Id/- P.M.L.
dt/- 17/6/

U.O. to H.D. No. 6850, dated the 21st June 1949. Y.V.

Office of the R.L.A.

Motor Vehicles Act, 1939. 2(19) General Section Clauses Act, 1897, S c.13 Whether the Practice of registration of Motor Vehicles in joint names can be stopped.

It appears from the letter of the Provincial Motor Transport Officer, that the Regional Transport Officer, Bombay is of the opinion that since the term "owner" has been defined in singular in Section 2(19) of the Motor Vehicles Act , 1939 and has not been used in theplural sense in the Act, the procedure hitherto followed in registering motor vehicles in joint names is not in accordance with Act and Rules framed thereunder.The Provincial Motor Transport Officer further points out thatthe practice ofregistering vehicles in joint names is found to be inconventient from the administrative point of view.

R.L.A. has therefore been requested to opine whether the practive of registering the vehicles in joint names can be stopped and whether it would be justifiable under the Motor Vehicles Act, 1939 and the Motor Vehicles Rules, 1940.

Sub-section (19) of section 2 runs as follows:-

> "'owner' means, where the person in possession of a motor vehicle is a minor, theguardian of such minor, and in relation to a motor vehicle which is thesubject of hire-purchase agreement , the person in possession of the vehicle under that agreement."

The term 'person' has not been defined in the Motor Vehicles Act, but under section 13 of the General Clauses Act, 1897 , unless there is anything repugnant in thesubject or context, words in the singular shallinclude the plural.

Under the general law there is no prohibition against two or more persons jointly owning a motor vehicle. Sections 23 and 24 of the Motor Vehicles Act, 1939 , provide for registration of motor vehicles. Neither theMotor Vehicles Act, 1939 nor the Motor Vehicle Rules , 1940 framed thereunder contain any provision that no motor vehicle shall.....

shall be registered in the joint names of 2 or more persons. It would not therefor be legal to refuse the registration of a motor vehicle in the joint names of 2 or more persons. The practice of registering vehicles in joint names cannot therefore be stopped without amending the Act and the administrative inconvenience is no valid ground for disregarding the provisions of theAct.

Id/- P.M.L.
dt/- 3/8/

Remembrancer of Legal Affairs.

U.O. to H.D. 8777 , dated the 4th August 1949.

V.v.k. 6/8/56/

SC.

Office of the R.L.A.

Motor Vehicles Act, 1939 Section 25.

Temporary Registration of Vehicles.

Sub-section (1) of section 25 of the Motor Vehicles Act, 1939, provides for temporary registration of a motor vehicle. Sub-section (2) provides that a registration made under this section shall be valid only for a period not exceeding one month and shall not be renewable. "Renewal of a licence means a new licence granted by way of a renewal" (see Iyer's Law Lexicon, page 1107). No valid distinction can be made between therenewal of a temporary registration and the grant of a fresh temporary registration after the lapse of the first temporary registration. Consequently, it would not be legal to grant a temporary certificate of registration again after the ffirst temporary certificate of registration has lapsed. The practice hitherto followed by the Provincial Transport Officer of granting a fresh temporary registration certificate after the lapse of the first temporary certificate is not lawful as it amounts to renewal within the meaning of section 25(2). Assuming that the grant of a fresh temporary certificate after the lapse of the firse temporary certificate is lawful, it would not be legal to recover tehe tax under the Bombay Motor Vehicles Taxe Act as the notification No. 4361/5 dated the 4th March 1948 covers temporary registration and is not limited to temporary registrationand is not limited to temporary registrationcertificate issued for the first time.

Id/- P.M.L.
dt/- 3/8/

Remembrancer of Legal Affairs.

U.R. to H.D. No. 6723 , dated the 4th August 19 1949.

V.v.k. 6/6/56/ 5c.

Office of the R.L.A.

Section 42 (1) of the Motor Vehicles Act, 1939, provides that no owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by Regional or Provincial Transport Authority etc. etc. The offence in this case consisted in carrying an excess number of passengers than is allowed by the permit. The driver was independently convicted for breach of rule 83(viii) of the Motor Vehicles Rules, which penalises a driver ~~was independently convicted for breach of rule 83(viii)~~ or a conducter who allows any person to be carried in any public vehicle in excess of the seating capacity specified in the certificate. The owner in this case was recommended for acquittal by the Sessions Judge of Satara, which recommendation was accepted by the High Court (without recording any independant reasons) on the ground that there was nothing to show that the owner had permitted the driver to admit excess passengers, since when the bus left Karad it had 23 passengers, and the driver had on the way taken additional passengers on his own responsibility. The R.L.A. is requested to advise whether any amendment of the Act is necessitated by this division.

2. Unfortunately, no instructions were sought from the R.L.A. either by the Government Pleader or by the Department concerned when the matter was pending in the High Court. The High Court also has not recorded any independent reasons for the view they have taken. They have merely endorsed the reasoning of the Sessions Judge. That reasoning does not appear to be correct. In the first place section 42 is intended to apply exclusively to an owner. The driver and the conducter become independently liable for punishment for breach of the rule. The words used in section 42 are "shall use or permit the use of

the vehicle". As was observed Lord Justice Atkin in Berton v. Alliance Economic Investment Co. (1922, 1 King's Bench p. 742 at p. 759), the word "permit" means one of two things, either to give leave for an act which without that leave could not be legally done, or to abstain from taking reasonable steps to prevent the act where it is within a man's power to prevent it. That being the meaning of the word "permit", unless it was shown that he had taken all reasonable steps to prevent the act of the driver accepting excess passengers, the owner, would be liable. Presumably, the owner retained the benefit of the fares paid by these excess passengers. It was his duty to make inquiries at that time, and in any case the section expects that he must not abstain from taking reasonable steps for preventing the acceptance of excess passengers. it is true that there might be cases where with the best possible diligence the owner is unable to prevent the offence, especially where the driver or the conducter for making private gain may accept passengers even without the knowledge of the owner. The section has been strictly construed by two different High Courts in this Country. Thus, the case of Devi Dayal v. The Crown (I.L.R. II Lahore 708) is on all fours with the present case, and it was there held apart from other considerations, that the owner was in law clearly guilty. in the case of King-Emperor v. Amrutlal (I.L.R. 1945 Nag. 745) a similar view was taken, and Pollock J. observed that an owner cannot escape liability on the ground that he had provided an agent to do a particular act and could not be held responsible for the default of that agent, and that he would be responsible for seeing that the conditions of the permit are carried out, and if employees fail to carry out their duties diligently, he would be

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liable under section 42(1), as otherwise it would be easy for the owner to escape all liability.

3. In this state of law, I xxxxx would suggest that a test case may be made in the High Court when a suitable occasion arises. A copy of this opinion may be circulated to the law officers who conduct such prosecutions, so that they may invite a decisions. Section 42(1) need not be amended at this stage particularly as it is a comprehensive section applicable to other breaches of the permit. The question of amendment may have to be considerd if eventually our High Court is not inclined to consture the sections strictly as has been done by other High Courts.

Id/- P.M.L.
dt/- 18/8/

Remembrancer of Legal Affairs.

U.R. to H.D. (E) , No. 2409 , dated the 22nd August 1949.

V.v.k. 6/6/56/

SC.

Office of the R.L.A.

"To carry out the intentions of the Legislature it would be necessary to read theconjencions 'or' and "and " one for the other ". (See Maxwell page 209) . It is ture that the conjunction used between clauses (iii) and (iv) of Sub-section (1) of section 43 of the Motor Vehicles Act, 1939 is "or " and not "and " .But if these clauses are construed disjuctively it would be clear that clause (iv) would be meaningless, for nothing is stated as to what would happen after a declaration is made that Government would engage in the business of road-transport service either generally or in any area specified in the notification. Consequently, this provision would be intelligible only if it is construed conjunctively with the previous clause 'iii'. The view taken by the D.S. H.D. is not correct.

Id/- P.M.L.
dt/- 3/11/

Remembrancer of Legal Affairs

L.R. to H.D. No. 12395 , dated the 3rd November 1949.
(Please also see R.L.A.'s No. 14682, dated 17/12/49/)

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SC.

It has been held that jurisdiction by way of an appeal cannot be inferred it must be expressly given by the Statute (See 54 Bom. 864). In view of this principle Government amended rule 76 by adding sub-rule (1A) providing for a second appeal to Government against theorder of the R.T.A. and also inserted a new rule 76A taking power to Govt. to call for and examine the record pertaining to any orders passed by the R.T.A. (The Rules 76 (1A) and 76A came into force from 26/8/49/.

In theColonial Sugar Refining Co, Vs. Irving ,(1905 A.C. 369) the Australian Commonwealth Judiciary Act, 1903 , had abolished a right of appeal to the Privy Council from the Supreme Court of Queens Land, but this was held not to apply retrospectively to a suit pending when theAct was passed and decided by the Supreme Court after that date , Lord Macnaghtern observed-

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"To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as ~~a~~ of right is a very different thing from repealing procedure.." Following theprinciple laid down in the said decision, in the case of Delhi Cotton Co. Vs. Income Tax Commissioner, 30 Com. L.R.p. 60 at 64 , their Lordship observed:-

"Their Lordships can have no doubt that provisions which, if applied retrospectively , would deprive of their existing finality orders which, when the Statute came into force were final, are provisions which touch existing rights, Accordingly , if the section now in question is to apply to orders final, at the date when it came into force , it must be clearly so provided."

As there was no specific provision on the lines of rule 76(1A) ~~decided the appeal on 19-8-49, its decision~~ or rule 76A, when the committee of was P.T.A. decided the appeal on 19-8-49, its decisions was final, As rule 76A conferred on Government for the first time, the right to exercise its revisional powers with effect from 26-8-49, and since rule 76A has no retrospective effect, Government cannot deprive the existing finally attached to the order dated 19-8-49.

The view expressed in theH.D. Office note is correct (see Delhi cotton Co. vs. Income Tax commr. 30 from L.R. 60 at 64)

U.O.R. to H.D. No. 12829 dated the 15/12/49/

V.v.k.6/5/53/ SC.

R.I.No. 18507 dt. 11/11/49/.

Submitted.

2. Please see theletter of the Dy. Secy, General Administration Dept. Hyderabad State dated 5/9/1949. He has complained thatowners of motor vehicles registered in the Hyderabad State under the provisions of Indian Motor Vehicles Act as applied to that State, are required by the Registering Authorities in Bombay Province to re-register such motor Vehicles on payment of fresh registration fees when kept in this Province. He has stated that such re-registration is contrary to the provisions of sec. 28 of the Indian Motor Vehicles Act and has requested that when such vehicles are kept in this Province only registration mark should be assigned without requiring them to beregistered.The P.T.O. does not agree with this view on theground that when a vehicle is normally kept in this Province under the provisions of sec. 23 it will have to be registered and that the provision of registoration marks envisaged in sec. 29(1) is applicable to vehicles registered under theprovisions of this Act, and not under State laws. The D.S. H.'. however considers that the idea underlying sec. 29(2) is that re-registration is unnecessary and that the party has only to apply for a new registration mark.

The R.L.A. is requested to advise .

V.v.k. 6/6/50/

50.

Office of the R.L.A.

Motor Vehicles Act. Sections 23, 28(3) and 29(1).

Motor Vehicles Registered in Hyderabad State.

The view taken by Dy. Secy, H.D. is, correct Section 23 of the Motor Vehicles Act, 1939, would be subject to sections 28(1).

Id/- P.M.L.
dt/- 3/12/

Remembrancer of Legal Affairs.

R. to H.D. No. 14033 dated the 8th December 1949.

V.v.k. 6/6/50/

SC.

L.D.R.I. 1712²-A
18/10/49/

Office of the R.L.A.

There is no legal objection to the course as suggested by the Provincial Motor Transport Controller provided it is made clear that the compensation so paid will be deducted from thecompensation ultimately awarded by theCompensation Officer, and provided it is understood thatgovernment will be bound by thecompensatin so paid by them and will not be entitled to urge any reduction therein before theCompensation Officer.

Id/- P.M.L.
dt/- 21/ 11/-
Remembrancer of Legal Affairs.

U.O. to H.D. No. 13334, dated the
23rd November 1949.

V.Vk. 6/6/50/
50.

R.I.No. 15437 dt. 20-9-49.

Submitted .

2, The Provincial Transport Officer has in his letter dated 7/9/49/ proposed an amendment to rule 100 of the Bombay Motor Vehicles Rules, 1940 so as to empower persons in charge of Municipal Octroi posts to check uptrip records maintained in goods vehicles under rule 98 of the said rules. This amendment it is stated is to ensure correct assessment by the Municipal staff of the contents of motor vehicles for the purposes of levying octori duty under municipal acts, and to avoid delay and troubles which the municipal staff has to undergo for the purpose. The H.D. considers thatsuch a rule would not fall within therule making power under section 68(2)(x) .

The view expressed in the H.D. offfice ~~A~~ note ~~appears to be~~ is correct.

Id/-J .R.
dt/- 17/10/

A.L.R. Reply may be as at A

Reply A.

Id/- R.T.K.
dt/- 18/10/

R.L.A.'s Id/- P.M.L.
dt/- 18/10/

U.O.R. to H.D. No. 11733 dated the 20/10/1949/

V.V.K. 6/6/56/ 50.

Legal Department.

R. I. No. 19925/49

Submitted.

Please refer H.D. note at p. ante By Govt. orders No. H.D./4704/5, dated 17/6/1948, Regional Transport Authorities of Bombay, Konkan North Deccan, South Deccan, Gujarat and Karnatak are directed to grant stage carriage permits to the Govt. of Bombay.

However, after the above order was issued, consequent upon the merger of Indian States realignments of regions was necessary. Due to realignments, Gujrat Region was split up in North Gujarat and South Gujarat regions. The Provl. Motor Transport Controller requests that the Regional Transport Authorities of these two Regions may be directed under Sec. 58A of the Motor Vehicles Act, 1939 to grant stage carriage permits to the State Transport Corporation.

H.D. is of the view that under sec. 58A. of the Motor Vehicles Act, 1939 the Provl. Govt. may direct the R.T.A. or the P.T.A. to grant a stage carriage permit to the Provl. Govt. or any local authority specified in the order. The State Transport Corporation is neither the Provl. Govt. nor a local authority. It would not, therefore be possible for the provl. Govt to issued an order directing the R.T.A.s of the two regions mentioned above to grant a stage carriage permit to the State Transport Corporation. The question raised for consideration of the R.L.A. is whether the above view is correct.

V.v.k. 6/6/56/ SC.

Office of the R.L.A.

Seen and returned.

The view taken in the Home Department office note dated 30/11/49/ is correct.

Sd/- P.K.L.
dt/- 9/12/

Remembrancer of Legal Affairs.

U.R. to H.D. No. 14295 dated the
9th December 1949.

L.v.k. 8/8/50/

50.

Office of the R.L.A.

The Motor Vehicles Act, 1939.

It appears that theOil Companies have got refuellin g vehicles which operate in theair-fields for refuelling aeroplanes with aviation spirit. The question raised for R.L.A.'s consideration is whether these vehicles would be deemed to be operating in a public place within themeaning ofsection 42(1) of theMotor Vehicles Act, 1939.

Section 42(1) provides t hat no owner of a transport vehicle shalluse or permit the use of the vehicle in any public place s ave in a ccordance with the conditions of a permit etc. "public Place" is defined insection 2(24) as meaning a road, street, way or other place whether a thoroughfare or not, to which thepublic have a right of access and includes any place or stand at which the passengersxxx are picked up or set down by state carrier, Although the expression "Public Place " has not been defined in the Indian Panal Code, it h as been held that a railway platform, a goods yard of a railway station, harbour premises are public places on thegxx ground that the public have a right of access to thes places (See Ratanlal's Law of Crimes page 371). Under rule 80 of the Indian Aircraft Rules, 1937, an aerodrome shall be licensed by the Governor General in Council in one of the following categories, viz.

(a) for public use;

(b) for private use, that is to say for use by the licensee xx and by individuals specifically authorised by the licensee.

Under rule 81 every aerodrome which is licensed for public use or which is open to use by aircrafts registered in India upon payme t of charges shall to the same extent and upon the same conditions be open to use by aircrafts possessing thenationality of a contracting state.It appears from these rules that aerodromes are divided into two classes :

(a) private aerodromes ; and

(b) public aerodromes.

Public aerodromes are evidently places to which the public are a

given access .Consequently, if therefuelling vehicles in thepresentxxxx case operate in the air-fields of a public xxxxxx aerodrome they would be, deemed to ebe operating in a public place within the meaning of section 42(1).

Id/- P.....
dt/- 9/12/

Remembrancer of Legal Affairs.

U.H. to H.D. No. 14794 , dated the 20th December 1949.

V.v.k. 6/6/56/
50.

Office of the R.L.A.

The question raised for the Remembrancer of Legal Affairs's consideration is whether the booking clerks and conductors employed under the State Transport for the sale of tickets to passengers are agents within the meaning of Rule 102-A of the Bombay Motor Vehicles Rules 1940.

Sub-rule (1) of Rule 102-A of the Bombay Motor Vehicles Rules, 1940, provides that every owner of a public service vehicle to be let or plied for hire shall intimate to the Regional Transport Authority concerned the name and address of the person appointed on his behalf as the agent who has been engaged in the sale of tickets to passengers for travel by such vehicle. Sub-rule (2) provides that no person shall act as an agent of the owner of such public service vehicle and no owner shall so employ any person unless he has obtained an agent's licence in Form L.Ag. from the Regional Transport Authority concered. The Explanation to this sub-rule states that for the purposes of this sub-rule, persuading any person, soliciting or attempting to persuade any person to travel in a vehicle shall be deemed to be acting as an agent for the sale of tickets for travel thereby. This Explanation extends the ordinary definition of an agent. The booking clerks and conductors employed under the State Transport for the sale of tickets to passengers do not solicit custom. Consequently they do not come within the extended definition.

The next question would be whether they would come within the ordinary definition of an agent. "What distinguishes an agent from a servant is that the former enjoys freedom in carrying out his duties or employment, i.e., the time and place of his work, and has freedom to take up additional work and occupation or, in other words,

an agent is not under the control of his principal as a servant is under his masters (see Robins v. Inland Revenue (1920) 2 K.B. 679). The Conductors and booking clerks employed under the State Transport for sale of tickets are servants of theCrown and do not enjoy freedom in carrying out their duties or employment. Consequently, they cannot be considered as agents within themeaning of sub-rules (1) and (2) of Rule 102-A of the Bombay Motor Vehicles Rules, 1940.

Id/- P.M.L
dt/- 14/10/

Remembrancer of Legal Affairs.

U.R. to H.D. No. 11548 , dated the17th October 1949

V.v.k. 5/6/56/

50.

Office of the H.L.A.

Motor vehicles Act, 1939(1), section 43(iii) & (iv)Cancellation of permits of transport vehicles.

The question for theconsideration of H.L.A. is whether un er section 43 of theMotor Vehicles Act, 1939, the Provincial Government can cancel the permits granted under the Act inrespect of transport vehicles with a view to facilitating the Bombay State Road Transport Corporation operating theservices.

2. Attention is invited to H.L.A.'s opinions Nos. 7066 dated 28th July 1948 and 18395 dated 3rd November 1949 in which theH.L.A.has expressed theview that clauses (iii) and (iv) of sub-section (1) of section 43 of the Motor Vehicles Act, 1939, must beread together. Clause (iii) provides for thecancellation of permits in respect of transport vehicles and clause (iv) provides for the Provincial Government declaring its intention to engage in the business of road transport services. In xhxx view of H.L.A.'s opinion therefore permits can be only be cancelled if Government itself proposes to engage in the business of road transport services. The Provincial Government has since by G.N.H.D. No. 1760/5, dated 16th November 1949, constituted a Road Transport Corporation called the Bombay State Road Transport Corporation. The notification is issued under section 3 of the Road Transport Corporation Act, 1948(xxxii of 1948). Under section 4 of that Act any Corporation appointed by the Provincial Government shall be a body corporate. There is no provision in that Act that when a Corporation is established, the Provincial Government can cancel the permits granted to private operators. Clause (c) of sub-section (2) of section 3 of that Act refers to the provision to be made in therules for compensation to be paid to owners of any road transport service whose services are taken over by theCorporation. This merely suggestes that the State Road Transport Corporation can take over such services. It is sure that Act XXXII of 1948 provides for theProper representation of the Central

VID.V.K. 6/6/50. and.....

56.

and Provincial Governments, but that itself will not mean that the Corporation is a Department of Government when it is an independent statutory Body . It cannot therefore be styled as a "Government concern" as suggested by the P.S. H.D. Consequently it does not appear that the permits granted in respect of transport vehicles can be cancelled by Government merely because the Bombay State Road Transport Corporation wants to operate in the area. The power to cancel permits cannot be exercised under the provisions of the Law as it stands at present Such power can, however, be exercised when the Bombay State Road Transport Bill becomes an Act (Vide clause 3 of the Bill).

Id/- P.M.L.
dt/- 16/12/

Remembrancer of Legal Affairs.

U.O. to H.D. No. 14682 , dated the 17th December 1949.

V.v.k. 6/6/58/

SC.

Office of the R.L.A.

Motor Vehicles Act, 1939
Bombay Motor Vehicles Rules, 1940. rules 89 & 90.
Kolhapur State, Application (Application of Laws) Order, Clauses 5 and 7. 1949

The view taken by the Provincial Transport Officer on the question of issue of fresh registration certificates and licenses is correct. The fees in respect of registration certificates and licenses being already recovered under the laws in force in the Kolhapur State, the holders of such certificates and licenses would be deemed to have acquired a right within the meaning of the proviso to clause 5 of the Kolhapur State (Application of Laws) Order, 1949. Consequently, the holder of these certificates and licenses would not be liable to payment of any fresh fees so long as these certificates and licenses are in force and have not expired. There would be no legal objection to issuing fresh registration certificates and licenses under the Bombay Motor Vehicles Act and the Rules thereunder without levying any fresh fees for such issued. The Provincial Transport Officer has stated that full fees in respect of Drivers' or Conductors' badges should, however, be recovered. It is presumed that the rules similar to rules 89 and 90 of the Bombay Motor Vehicles Rules 1940 were in force in the Kolhapur State. If so, the holders of these badges would be entitled to a refund of Rs. 2/- upon the return of the badges issued by the Kolhapur State. Consequently in insisting payment of fresh on Kolhapur State fees for the issued of these badges, credit for Rs. 2/- for the return of the old badges will have to be given. The Provincial Transport Officer states that permit holders will have to pay for new permits as required under the Bombay Motor Vehicles Act and the Rules framed thereunder. It is presumed that fees for the issue of permits would be levied only when

now permits are to be issued to these permit holders, in which case, the view taken by the Provincial Transport Officer is correct.

The Deputy Secretary, Home Department has raised the point whether Government would be justified in taxing the vehicles afresh when the time limit of State tax on these vehicles has not yet expired. Obviously the reply to this question would be in the negative, for proviso to clause 5 of the Indian States (Application of Laws) Order, 1948 would exempt the assesses from payment of fresh tax so long as the period for which they have already been taxed by the State under a corresponding law, has not yet expired. It is presumed that the question raised by the Deputy Secretary in this respect relates to the double taxation complaint made by the Jawhar State people. From the letter of the Chief Administrator, Jawhar State, it appears that the owners of the Motor Vehicles in Jawhar State who had already paid the annual fees of Rs. 80/- per vehicle were required to pay in addition wheel Tax of Rs. 138-8-0 per vehicle. The Provincial Transport Officer opined that "although it was true that the owners of Motor Vechicles who had already paid the annual fee of Rs. 80/- per vehicle per annum to the Jawhar State authorities they had to pay the tax payable under the Bombay Motor Vehicles Tax Act, 1935. The taxes paid for the over lapping period, to the State authorities and also to the Regional Transport authorities, could not be held and no refund should be allowed." The Chief Secretary who was consulted directed that it would be unfair that a motor owner should be called upon to pay Rs. 80/- in addition to Rs. 138-8-0 as the result

or integratio for which he is not responsible. The Provincial Transport Officer there upon has stated hat steps are being taken by the Regional Transport Officer, Thana, to r evover the difference of the tax that is the difference between the tax due according to the schedule I of the Bombay Motor Vehicles Tax Act, 1935 and the tax recoverd by the Additional Administrator , Jawhar, as per statement referred to, but in his opinion there is no objection to adjusting the amount of unexpired perood that is from 1st July 1948 onwards out of the amount paid to the State authorities or Additional Administrator, towards the payment of tax under the Bombay Motor Vehicles Tax Act, 1935 without recovering peralty.

It appears from all these statements and pro posals that although the Motor owners in Jawhar State ahad paid the tax according to Jawhar State Law in respect of the motor vehicles it is considered that these owners would be liable to pay the tax according to the Bombay Motor Vehicles Tax Act, 1935 for the ~~max~~ period beginning from the date of integration of the State and consequently, whatever was r ecovered by the State should given credit for the tax due under the Bombay Mo tor Vehicles Tax Act, 1935 in respect of the period commencing from the dated of integration. This view does not appear to be correct. Under the proviso to clause 5 of the Indian States (Application of Laws) Orders 1948 the payment of the tax by the motor owners in Jawhar State before the integration of the ~~Jawhar State before the integration of the~~ Jawhar State in the Bombay Province would be valid evenn after the integration for the period for which the tax was paid and no fresh levy or any difference between the tax levied under the

Bombay Motor Vehicles Tax Act, 1935 could be revovered, and inspite of integration the tax as leviable under the Jawhar Law would continue to be in force uhtil provision to the contrary is made by competent authority. (SEE clause 7 of the Indian States (Application of Laws) Order, 1948). It is presumed that no such provision to thecontrary is made by a competent authority. If so, the levy of the tax under the Bombay Motor Vehicles Tax Act and that under the Jawhar State Law would not be competent.

Id/- P.M.L.
dt/- 16/8/

Remembrancer of Legal Affairs.

H.R. to H.D. No. 9272 , dated the
18th August 1949.

V.V.K. 6/6/56/
SC.